

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X INDEX NO. CV-10-3362

EMMANUEL BENITEZ, on behalf of himself and
others similarly situated,

ANSWER

Plaintiff,

-against-

VELAS Y CIELO CORP., D/D/A PATIO RESTAURANT and
ARELIS FERNANDEZ,

Defendants.

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C O U N S E L O R S :

The defendants VELAS Y CIELO CORP., D/D/A PATIO RESTAURANT and
ARELIS FERNANDEZ, by their attorney, Luis F. Echeverria, as and for
their Answer to the Complaint, respectfully allege:

1. Defendants deny the allegations set forth in paragraph 1 of
the complaint.

2. Defendants deny the allegations set forth in paragraph 2 of
the complaint.

3. Defendants deny knowledge or information sufficient to form
a belief as to the allegations set forth in paragraph 3 of the
complaint.

4. Defendants deny knowledge or information sufficient to form
a belief as to the allegations set forth in paragraph 4 of the
complaint.

5. Defendants deny knowledge or information sufficient to form
a belief as to the allegations set forth in paragraph 5 of the
complaint.

6. Defendants deny the allegations set forth in paragraph 6 of the complaint.

7. Defendants deny the allegations set forth in paragraph 7 of the complaint.

8. Defendants deny the allegations set forth in paragraph 8 of the complaint.

9. Defendants deny the allegations set forth in paragraph 9 of the complaint.

10. Defendants deny the allegations set forth in paragraph 10 of the complaint.

11. Defendants deny the allegations set forth in paragraph 11 of the complaint.

12. Defendants deny the allegations set forth in paragraph 12 of the complaint.

13. Defendants deny the allegations set forth in paragraph 13 of the complaint.

14. Defendants deny the allegations set forth in paragraph 14 of the complaint.

15. Defendants deny the allegations set forth in paragraph 15 of the complaint.

16. Defendants deny the allegations set forth in paragraph 16 of the complaint.

17. Defendants deny the allegations set forth in paragraph 17 of the complaint.

18. Defendants deny the allegations set forth in paragraph 18 of the complaint.

19. Defendants deny the allegations set forth in paragraph 19 of the complaint.

20. Defendants deny the allegations set forth in paragraph 20 of the complaint.

21. Defendants deny the allegations set forth in paragraph 21 of the complaint.

22. Defendants deny the allegations set forth in paragraph 22 of the complaint.

23. Defendants deny the allegations set forth in paragraph 23 of the complaint.

STATEMENT OF CLAIM: COUNT I VIOLATION OF THE
FAIR LABOR STANDARDS ACT

24. Defendants repeat the answers in paragraphs 1 through 23 above as if fully set forth herein.

25. Defendants admit the allegation set forth in paragraph 25 of the complaint.

26. Defendants deny the allegations set forth in paragraph 26 of the complaint.

27. Defendants deny the allegations set forth in paragraph 27 of the complaint.

28. Defendants deny the allegations set forth in paragraph 28 of the complaint.

29. Defendants deny the allegations set forth in paragraph 29 of the complaint.

30. Defendants deny the allegations set forth in paragraph 30 of the complaint.

31. Defendants deny the allegations set forth in paragraph 31 of the complaint.

32. Defendants deny the allegations set forth in paragraph 32 of the complaint.

33. Defendants deny the allegations set forth in paragraph 33 of the complaint.

34. Defendants deny the allegations set forth in paragraph 34 of the complaint.

35. Defendants deny the allegations set forth in paragraph 35 of the complaint.

36. Defendants deny the allegations set forth in paragraph 36 of the complaint.

37. Defendants deny the allegations set forth in paragraph 37 of the complaint.

38. Defendants deny the allegations set forth in paragraph 38 of the complaint.

39. Defendants deny the allegations set forth in paragraph 39 of the complaint.

40. Defendants deny the allegations set forth in paragraph 40 of the complaint.

COUNT II VIOLATION OF THE

NEW YORK LABOR ACT

41. Defendants repeat the answers in paragraphs 1 through 40 above as if fully set forth herein.

42. Defendants deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 42 of the complaint.

43. Defendants deny the allegations set forth in paragraph 43 of the complaint.

44. Defendants deny the allegations set forth in paragraph 44 of the complaint.

45. Defendants deny the allegations set forth in paragraph 45 of the complaint.

46. Defendants deny the allegations set forth in paragraph 46 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

47. The complaint in its entirety, and each cause of action contained therein, fail to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

48. Plaintiff is estopped from alleging the allegations in the complaint by virtue of Plaintiff's culpable conduct or unclean hands.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

49. Plaintiff's allegations in the complaint are barred in whole or in part by the applicable statute of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

50. That the plaintiff has failed to use available means to mitigate damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

51. Plaintiff's allegations in the complaint are barred by virtue of plaintiff's failure to comply with 29 U.S.C. section 216(b).

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

52. The claim sued upon has been extinguished by payment thereof in full.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

53. Defendants currently have insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated defenses available. Accordingly, Defendants reserve the right to assert additional defenses in the event discovery indicated they are appropriate.

WHEREFORE, the defendants respectfully request judgment dismissing the complaint, granting the costs and disbursements of this action, and for such other and further relief as to this Court may seem just and proper.

Dated: Woodside, New York
November 15, 2010

LUIS F. ECHEVERRIA

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ANSWER

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